IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

RCRev..No. 155 of 2007()

RCA.39/2004 of I ADDL. DISTRICT COURT, TRIVANDRUM
OPRC.2/2001 of MUNSIFF COURT,ATTINGAL

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REVISION PETITIONERS/APPELLANTS/RESPONDENTS 1 AND 4:
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1. SOMAKUMAR, S/O.SOMARAJAN, MERCHANT,
VARIKATTUVEEDU, THIRUMULLAVARAM,
KOLLAM WEST VILLAGE, KOLLAM.

2. HAREENDRAN, S/O.SADANANDAN PILLAI,
MERCHANT, SADANAM, THENCHERIKONAM, MANAMBOOR,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.P.B.SURESH KUMAR
SRI.K.P.SUJESHKUMAR

RESPONDENT/RESPONDENT/PETITIONER:

NAZAR, S/O.ALIYARKUNJU, COMPANY EMPLOYEE
FROM THEKKE POOMANGALATHU VEEDU, KIZHUVILAM,
RESIDENT OF AL-SAFA VILLA, KIZHUVILAM DESOM,
KIZHUVILAM VILLAGE.

BY ADV. SRI.G.S.REGHUNATH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

R.C.R. NO. 155 OF 2007-C

Dated 10th September, 2007.

ORDER

Balakrishnan Nair, J.

The tenants are the revision petitioners. The landlord is the respondent. The landlord moved the Rent Controller, claiming eviction of the tenants under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The landlord owned about 25 cents of land. It is bounded on two sides by roads. On the northern side is the national highway and on the southern side, the palace road. A line building consisting of five rooms is covering the entire southern boundary of the landlord's plot. The said building abut the palace road, as stated earlier. Out of the five rooms, four belonged to the landlord. He moved and obtained building permit for construction of a large commercial complex in the said plot. As per the approved plan attached to the building permit, the line building owned by him has to be demolished, so that there is access from the palace road and area is available for parking

vehicles. After obtaining the permit the landlord started construction and simultaneously he filed the Rent Control Petition to evict the four tenants occupying his rooms. Out of the five rooms, one belongs to a third party. During the pendency of the rent control proceedings, two of the tenants surrendered the premises in their possession.

2. The petitioners herein alone contested the matter. The need projected was to get the tenanted rooms and demolish them for the above mentioned purpose. Thus, the petition was laid under Section 11(3). The tenants contended that the building has got sufficient parking area and also access from the northern side from the national highway. Therefore, the need projected is without any bona fides. They also contended that since one of the rooms belongs to a third party, it is not possible to demolish the entire building. Further, they denied the claim made under Section 11(2)(b). Apart from the above grounds, an objection to the maintainability of the Rent Control Petition was also raised. According to them, the landlord should have filed four separate Rent Control Petitions. The learned counsel for the landlord pointed out that there was no such specific contention raised in the written objection, except the bald statement that the R.C.P is not maintainable. Whatever be that, the Rent Controller considered the point and held the same in favour of the landlord. The claim under Section

11(2)(b) was rejected and the prayer under Section 11(3) was allowed. The tenants appealed. During the pendency of the rent control proceedings, two of the rooms, which were surrendered by the tenants, were demolished and access was provided to the said building from the palace road also. So, they pointed out that the need of the landlord is already satisfied. The contentions raised before the Rent Controller were also reiterated before the appellate authority. The appellate authority affirmed the finding under Section 11(3). Hence this revision.

3. The learned counsel for the revision petitioners raised three points in this revision. The first point is regarding the mis-joinder of parties. The learned counsel pointed out that this point was specifically raised before the appellate authority. But, it was not considered by the said authority. Further, relying on the decision of the Full Bench of this Court in **Jamal v. Safia Beevi** [2005(2) KLT 359 FB], it is submitted that for the reason that a single R.C.P was filed for the eviction of four tenants, the same was liable to be dismissed. The learned counsel for the respondent also relied on the very same decision to say that the joint petition was maintainable. Going by the principles laid down by the Full Bench of this Court in the said decision and also the provisions under Section 99 of the C.P.C., we feel that unless

prejudice is shown, mis-joinder cannot be a ground to interfere with the orders of the appellate authority. Going by the revision petition, we find that there is no pleading regarding any prejudice caused to the petitioners. On a perusal of the materials on record, we find that in all the cases the grounds for eviction were the same. The defence of the tenants was also identical. The Rent Controller as well as the appellate authority considered the common defence put forward by the tenants. Both the authorities separately considered the protection claimed by the petitioners under the second proviso to Section 11(3) also. Therefore, no prejudice was caused to the petitioners herein by the filing of a single petition. So, we are not inclined to interfere with the impugned judgment of the appellate authority, on the ground of mis-joinder of parties.

4. The second point urged by the learned counsel for the revision petitioners was concerning the bona fides of the claim of the landlord. Under the said ground, the learned counsel raised three points. Firstly, it is submitted that even without the area covered by the tenanted premises, the landlord has got sufficient parking space. Secondly, it is pointed out that though from the approved building plan it would appear that the entire building on the southern side has to be demolished, the same cannot be demolished, as a portion of the same belongs to a third party. Lastly, it is

pointed out that during the pendency of the rent control proceedings two of the rooms were surrendered and they were demolished, providing access to the road on the southern side. So, the need of the landlord stood satisfied substantially, it is submitted.

5. The landlord is bound to provide the statutory parking space, as provided under the plan attached to the building permit. Even otherwise, if the landlord feels that some more parking space is necessary for a huge commercial complex, the same can only be treated as a bona fide requirement. Even if the landlord cannot demolish the entire building, he is bound to demolish that part of the building which belongs to him. So, the contention that if he cannot demolish the entire building, he need not demolish anything, cannot be accepted. The tenants cannot dictate that the landlord should be satisfied with the passage and parking area available with the demolition of the two rooms. If he wants the remaining portion of his building also, the same will definitely constitute a bona fide need. Therefore, the contentions raised by the revision petitioners against the need of the landlord are repelled.

6. The third point urged by the learned counsel for the revision petitioners is that the ground raised by the landlord will more appropriately lie under Section 11(4)(iv) instead of Section 11(3) of the Act. We think,

this is not a ground taken in this Rent Control Revision. The learned counsel pointed out that it is specifically pleaded in this revision that the need urged by the landlord will not come under Section 11(3). But, the requirement of a building for demolition and its use for other purposes has been held to be a need under Section 11(3), by several decisions of this Court (See **Krishna Menon v. District Judge** – 1988(1) KLT 131 and **Narayanankutty v. Abiida Abdul Kareem** – 2002(2) KLT 507). See also the recent decision of this Court in R.C.R. No.227/2004 dated 7.9.2007. In view of the above position, the Rent Control Revision fails and it is accordingly dismissed. No costs.

7. The learned counsel for the revision petitioners prayed for some time to vacate the premises. Having regard to the facts of the case three months' time from today is granted, on condition the petitioners file an affidavit before the executing court, unconditionally undertaking to vacate the premises within three months from today and also agreeing to pay the rent till the rooms are vacated. The affidavit in this regard shall be filed

within three weeks from today.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/